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April 29, 2011

Via ECF and Facsimile to (973) 645-4412

The Honorable Michael A. Shipp, U.S.M.J.
The United States District Court for the District of New Jersey
Martin Luther King, Jr. Federal Building & United States Courthouse
50 Walnut Street
Newark, New Jersey 07101

Re: ***Reyes v. Keith Machinery Corp., et al.***
Civil Action No.: 2:09-CV-5309
Our File No.: 348-1033

Dear Judge Shipp:

This firm represents defendant Keith Machinery Corp. ("KMC") in the above-referenced matter. We are writing in response to plaintiff's letter to the court, dated April 28, 2011, regarding KMC's Cross-Motion for Summary Judgment ("Cross-Motion"). KMC's Cross-Motion is properly considered by the court because it is procedurally proper and there is no prejudice to plaintiff.

KMC's Cross-Motion was timely filed in accordance with Loc. Civ. R. 7.1(h), which specifically states: "A cross-motion related to the subject matter of the original motion may be filed by the party opposing the motion together with that party's opposing papers and may be noticed for disposition on the same day as the original motion, as long as the opposition papers are timely filed." (emphasis added). See *Davis v. Twp. of Paulsboro*, 371 F. Supp. 2d 611, 617 (D.N.J. 2005) (holding that the cross-motion was proper where it dealt with the same issues of law), see also *Petinga v. Sears, Roebuck & Co.*, 2009 WL 1622807 at 4 n.9 (D.N.J. June 9, 2009). In accordance with this court's April 16, 2011, Order, all opposition papers to summary judgment must be filed by today, April 29, 2011. KMC submitted its partial opposition to defendant Littleford's motion for summary judgment and its Cross-Motion on April 28, 2011. The Cross-Motion seeks dismissal of both plaintiff's Complaint and all cross-claims asserted by Littleford. There is no question that KMC's Cross-Motion is sufficiently related to Littleford's motion as KMC clearly adopts the arguments set forth in Littleford's motion in support of its own papers.

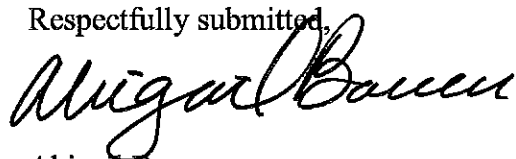
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Furthermore, there is no prejudice to plaintiff because he is entitled to an automatic extension of the return date of the Cross-Motion, which extends his time to file an opposition. Loc. Civ. R. 7.1(h) specifically states that Loc. Civ. R. 7.1(d)(5), which permits a party opposing a dispositive motion to obtain an automatic extension of the return date by one motion cycle, is applicable to cross-motions. In addition, KMC has no objection to consenting to additional time for plaintiff to oppose the instant Cross-Motion.

As such, KMC's cross-motion was timely filed and is properly considered by the court.

We appreciate Your Honor's time and attention to this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Abigail Bowen", is written over the typed name.

Abigail Bowen
Haworth Coleman & Gerstman, LLC

Cc:

The Honorable Dickinson R. Debevoise, U.S.D.J.

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